BEFORE THE

STATE OF WISCONSIN

DIVISION OF HEARINGS AND APPEALS

DODGE CITY OF MILWAUKEE, INC.,
and
DODGE CITY OF WAUWATOSA, INC.

Complainants,

v. Docket No.: 94-H-852

CHRYSLER CORPORATION,

Respondent,

and

CRAIG A. EWALD,

Intervenor.

FINAL DECISION

By letters dated December 21, 1993 Chrysler Corporation informed Dodge City of Milwaukee, Inc. and Dodge City of Wauwatosa, Inc. of its intention to establish a Dodge-Dodge truck dealership within their relevant market area. By letter dated January 5, 1994 Dodge City of Milwaukee, Inc. and Dodge City of Wauwatosa, Inc. demanded mediation pursuant to §218.01(7m), Wis. Stats. Also by complaint dated January 5, 1994 filed with the Division of Hearings and Appeals, Dodge City of Milwaukee, Inc. and Dodge City of Wauwatosa, Inc. protested the establishment of the proposed dealership. On January 6, 1994 an order suspending the proceeding was issued pending the results of the mediation.

By letter dated February 23, 1994 the complainants informed the Division of Hearings and Appeals that the dispute was not resolved through mediation. In response to this letter a prehearing conference was conducted on March 14, 1994. On April 8, 1994 an order granting the motion of Craig Ewald to intervene was issued. Pursuant to §218.01(3)(f), Wis. Stats., and upon due notice, the Division of Hearings and Appeals held a hearing on August 15, 16, 17, 18, 19, 31, September 1, 12, and 13, 1994 in Milwaukee, Wisconsin. Mark J. Kaiser, Administrative Law Judge, presided.

Appearances:

Dodge City of Milwaukee, Inc., and Dodge City of Wauwatosa, Inc., complainants, by

Paul R. Norman and James E. Bartzen, Attorneys,
Boardman, Suhr, Curry & Field
One South Pinckney Street, Madison, Wisconsin

Chrysler Corporation, respondent, by

James R. Vogler and Kevin Tottis, Attorneys,
Keck, Mahin & Cate
77 West Wacker Drive, 49th Floor
Chicago, Illinois 60601-1693

Craig A. Ewald, Intervenor, by

Bruce C. O'Neill and Thomas P. Shannon, Attorneys,
Fox, Carpenter, O'Neill & Shannon, S.C.
622 North Water Street Suite 600,
Milwaukee, Wisconsin 53202-4978

The complainants filed their initial post-hearing brief on October 14, 1994. The intervenor filed its response brief on November 16, 1994 and the respondent filed its response brief and an appendix on November 17, 1994. The complainants filed their reply brief on December 2, 1994. The administrative law judge issued a proposed decision on March 8, 1995. The intervenor filed comments on the proposed decision on March 21, 1995, the complainants filed comments on March 23, 1995, and the respondent filed comments on March 24, 1995.

The comments of the intervenor and respondent were limited to identifying typographical errors in the proposed decision. The complainants objected to several findings of fact, four conclusions contained in the findings of fact, and the conclusion of law that good cause did not exist for not permitting the establishment of the proposed dealership. The arguments raised by the complainants in support of these objections were also raised by the complainants in their post-hearing briefs and were adequately addressed in the proposed decision.

The arguments of the complainants are not persuasive. With the exception of correcting typographical errors and minor editorial changes which do not affect the substance of the decision, the proposed decision is adopted as the final decision in this matter.

APPLICABLE LAW

§218.01 (3) (f) 1, Wis. Stats., provides in relevant part:

(f) 1. A manufacturer ... who seeks to enter into a franchise agreement establishing ... a motor vehicle dealership ... within the relevant market area of an existing enfranchised dealer of the line make of motor vehicle shall first notify in writing the [D]epartment [of Transportation] and each such existing enfranchised dealer of its intention to establish or relocate a dealership or outlet. Within 30 days of receiving the notice or within 30 days after the end of any appeal procedure provided by the manufacturer ... whichever is later, any existing enfranchised dealer of the same line make to whom the manufacturer, importer or distributor is required to give notice under this subdivision may file with the department and the division of hearings and appeals a complaint protesting the proposed establishment or relocation of the dealership or outlet within the relevant market area of the existing enfranchised dealer. If a complaint is filed, the department shall inform the manufacturer, importer or distributor that a timely complaint has been filed, that a hearing is required, and that the proposed franchise agreement may not be entered into until the division of hearings and appeals has held a hearing, nor thereafter, if the division of hearings and appeals determines that there is good cause for not permitting the proposed establishment or relocation of the dealership or outlet. In the event of multiple complaints, hearings shall be consolidated to expedite the disposition of the issue.

§218.01 (3) (f) 2, Wis. Stats., provides:

2. In determining whether good cause exists for not permitting the proposed establishment or relocation of a dealership or outlet, the division of hearings and appeals shall take into consideration the existing circumstances, including, but not limited to:

a. The amount of business transacted by existing enfranchised dealers of the line make of motor vehicle when compared with the amount of business available to them.

b. The permanency of the investment necessarily made and the obligations incurred by existing enfranchised dealers in the performance of their franchise agreements.

c. The effect on the retail motor vehicle business in the relevant market area.

d. Whether it is injurious to the public welfare for the proposed dealership or outlet to be established or relocated.

e. Whether the establishment or relocation of the proposed dealership or outlet would increase competition and therefore be in the public interest.

f. Whether the existing enfranchised dealers of the line make of motor vehicle are providing adequate consumer care for the motor vehicles of that line make, including the adequacy of motor vehicle service facilities, equipment, supply of parts and qualified personnel.

g. Whether the existing enfranchised dealers of the line make of motor vehicle are receiving vehicles and parts in quantities promised by the manufacturer, factory branch or distributor and on which promised quantities existing enfranchised dealers based their investment and scope of operations.

h. The effect the denial of such establishment or relocation would have on the license applicant, dealer or outlet operator who is seeking to establish or relocate a dealership or outlet.

§218.01 (1) (r), Wis. Stats., provides:

(r) "Relevant market area" means all of the area within a 10-mile radius of the site of an existing enfranchised motor vehicle dealership or the area of sales responsibility assigned to the existing enfranchised dealership by the manufacturer, factory branch or distributor, whichever is greater.

FINDINGS OF FACT

THE ADMINISTRATOR FINDS:

1. Dodge City of Milwaukee, Inc., (DCOM) is a new and used motor vehicle dealer licensed by the Wisconsin Department of Transportation with facilities located at 4460 South 27th Street, Milwaukee. Dodge City of Wauwatosa, Inc., (DCOW) is a new and used motor vehicle dealer licensed by the Wisconsin Department of Transportation with facilities located 11333 West Burleigh Road, Wauwatosa.

2. DCOM and DCOW are both owned by Schlossmann Investments, Inc. Shareholders in Schlossmann Investments, Inc., are Robert Schlossmann, his wife, and two sons, Brad Schlossmann and Mike Schlossmann (the Schlossmann family will be referred to collectively as "the Schlossmanns"). The Schlossmanns have owned and operated DCOW since 1967 and DCOM since 1979.

3. Chrysler Corporation (Chrysler) is a motor vehicle manufacturer licensed by the Wisconsin Department of Transportation. Chrysler manufacture and distributes Dodge cars and Dodge trucks, as well as Chrysler, Plymouth, Jeep and Eagle line makes. Chrysler franchises dealers as Dodge car and Dodge truck (D/DT or Dodge), Chrysler and Plymouth (C-P), or Jeep and Eagle (J-E) dealers. DCOM and DCOW, as their names indicate, are D/DT dealers.

4. Chrysler has assigned what it refers to as the "Milwaukee Sales Locality" (MSL) as the area of sales responsibility for both DCOW and DCOM is. The MSL consists of all of

Milwaukee County and parts of Waukesha, Ozaukee and Washington counties. Four other D/DT dealers are also assigned the MSL as their areas of sales responsibility. The other four dealers are Stark Dodge, Inc. (Stark), North Shore Dodge, Inc. (North Shore), Wilde Dodge, Inc. (Wilde), and Five Corners Dodge,Inc. (Five Corners). Pursuant to §218.01(3)(f)3, Wis Stats., the MSL is the relevant market area for DCOW, DCOM and the other four existing D/DT dealers.

5. The MSL is part of the Milwaukee Zone. The Milwaukee Zone consists of Wisconsin, two-thirds of the upper peninsula of Michigan and the northeast corner of Iowa.

6. The MSL is divided into seven trading zones. A "trading zone" is a group of census tracts that Chrysler assigns to each dealer point in a multiple dealer market such as the MSL. Six of the trading zones have an existing D/DT dealer. The six zones and the existing dealer are Cedarburg (Five Corners), North Milwaukee (North Shore), Menomonee (Stark), Waukesha (Wilde), Wauwatosa (DCOW), and South Milwaukee (DCOM). The seventh trading zone is the West Allis Trading Zone.

7. The last D/DT dealership located in the West Allis Trading Zone was Doering Dodge. Doering Dodge's facility was located on Arthur Street, one block east of 108th Street in West Allis. In 1980, Doering Dodge voluntarily surrendered its D/DT franchise and became a Chevrolet dealer.

   When Doering Dodge surrendered its franchise the West Allis Trading Zone became an open point. An open point is a sales locality in which a dealer does not currently exist. In 1984, Chrysler designated the West Allis open point a "deferred" dealer point. A deferred dealer point is an open point for which Chrysler is not actively seeking a dealer. In 1991, Chrysler activated the deferred point.

8. The efforts of Chrysler to close the West Allis open point for Dodge began in earnest in 1992. Chrysler representatives spoke with several existing dealers about opening a D/DT dealership in the West Allis Trading Zone. None of the these discussions led to serious negotiations. One reason these discussions never progressed is the Schlossmanns indicated they would protest the establishment of a D/DT dealership in this area.

   In November of 1992, Chrysler officials approached the Schlossmanns about establishing a D/DT dealership in the West Allis Trading Zone. The Schlossmanns were not interested in committing the resources to building a full service dealership in this area. Chrysler now proposes to award a D/DT franchise to Craig Ewald. The proposed dealership will be located at 6319 South 108th Street, Franklin, Wisconsin. By letters dated December 21, 1993, Chrysler provided written notice to the existing D/DT dealers in the MSL of its intent to establish Craig Ewald as a D/DT dealer in the West Allis Trading Zone.

9. Craig Ewald is the son of Emil Ewald. The Ewald family owns Mayfair C-P-J-E, located in Wauwatosa and a C-P dealership in Oconomowoc, Wisconsin. In the fall of

1993, the Ewalds attempted to acquire the existing J-E franchise in Greenfield (Doucas Jeep-Eagle). Chrysler refused to approve the transfer of this franchise to the Ewalds. After the attempt to obtain a J-E franchise was unsuccessful, the Ewalds sought a D/DT dealership in the West Allis Trading Zone.

10. Chrysler assigns each of its dealers a Minimum Sales Responsibility. Minimum Sales Responsibility (MSR) is defined as "the number of new passenger cars or trucks a dealer must sell to equal the product acceptance in his Sales Zone for the vehicle lines that he carries." (complainants exhibit 140, p. 12) Section 11 of Chrysler Motor Corporation Sales and Service Agreement with its dealers (complainants exhibit 206) provides that the dealer "shall use its best efforts to promote energetically and sell aggressively and effectively at retail" new Chrysler vehicles. The dealer "will sell the number of new [Chrysler] vehicles necessary to fulfill [the dealer's] Minimum Sales Responsibility for each passenger car line or truck ...."

MSR is calculated, according to the Sales and Service Agreement, by multiplying the total number of new cars and trucks registered in the dealer's sales locality by the penetration ratio for the sales zone in which the relevant dealer is located (for DCOW and DCOM this would be the Milwaukee Sales Zone). "Penetration ratio" is the ratio of new Dodge passenger cars and/or trucks registered in a geographic area compared to the total number of new cars and trucks registered in the same geographic area. If, as in the instant case, more than one D/DT dealer exists in the sales locality, Chrysler will assign each dealer a fair share of the MSR for the sales locality. Chrysler may make adjustments in a dealer's MSR on the basis of local market conditions.

11. The penetration ratio for Dodge cars and trucks in the MSL for 1993 was 7.3%, 4.3% for cars and 12.3% for trucks (complainants exhibit 211); the penetration ratio in the Milwaukee Zone was 5.8% for cars and 13.4% for trucks (respondent exhibit 114). The penetration ratio for Dodge in the U.S. was 6.5%, 4.2% for cars and 10.0% for trucks (complainants exhibit 211). Among the trading zones designated by Chrysler in the MSL the West Allis Trading Zone had the second lowest penetration ratio for Dodge cars, 3.5%, compared to 3.1% for North Milwaukee, and the second lowest penetration ratio for Dodge trucks, 9.8% compared to 9.6% for Waukesha (respondent exhibit 114 note: exhibit 114 is designated "confidential;" however, it was discussed during a portion of the hearing which was not confidential; therefore, it is assumed that this information is no longer considered confidential).

12. The MSRs (combined car and truck) for 1993 for the existing D/DT dealers in the Milwaukee Sales Locality are: DCOW --- 836, DCOM --- 942, North Shore --- 704, Stark --- 422, Wilde --- 699, Five Corners --- 350, and the West Allis open point --- 728. In 1993, DCOW sold 1414 new cars and trucks, DCOM sold 1389 new vehicles, North Shore sold 544 new vehicles, Stark sold 367 new vehicles, Wilde sold 711 new vehicles, and Five Corners sold 515 new vehicles (complainants exhibit 22 note: exhibit 22 is designated "highly confidential;" however, it was discussed during a portion of the hearing which was not confidential; therefore, it is assumed that this information is no longer considered confidential). Combined the MSR for the seven

D/DT trading zones in the MSL was 4,681 in 1993 (2,067 cars and 2,641 trucks) and the six existing dealers sold 4,940 new motor vehicles (1,950 cars and 2,990 trucks). The existing D/DT dealers in the MSL are meeting the MSR for the sales locality.

13. The fact that the existing dealers are meeting the MSR does not necessarily mean they are adequately penetrating the market. The existing dealers can be meeting their respective MSRs while the penetration rate is below the zone average. Sales made to customers residing outside the MSL and national fleet sales count towards a dealer's MSR; on the other hand, penetration ratios count new vehicles registered in the MSL.

14. Each dealer is assigned both an MSR and a planning potential. MSR is essentially the dealer's obligation to Chrysler, i.e., how many vehicles the dealer must sell to satisfy its contractual obligation to Chrysler. Planning potential is Chrysler's obligation to the dealer, i.e., how many vehicles the dealer can expect to receive from Chrysler. The minimum investment a new dealer is required to make in its facility is based on its planning potential.

15. Chrysler bases its facility and working capital guidelines for new dealers on the dealer's planning potential. Planning potentials are based on the approved Financial Planning Volumes, i.e., the number of cars and trucks Chrysler expects to build and sell, allocated to each sales locality in the United States. In sales localities with more than one D/DT dealer, planning potential is assigned on a fair share basis. (complainants exhibit 140, p. 10). Theoretically, a dealer needs to sell the number of vehicles in its planning potential to sustain its investment.

For existing dealers, Chrysler uses the greater of dealer's planning potential or its rate of travel as a guideline. "Rate of travel" is a total number of new vehicles a dealer sells in a year. Chrysler uses a dealer facility guide (complainant's exhibit 143) to determine the appropriate size for a dealer's facilities.

16. The proposed planning potentials for 1994 (combined car and truck) for the MSL is 4,463 motor vehicles. The proposed planning potentials for 1994 for the seven trading zones within the MSL are: South Milwaukee --- 1094; Wauwatosa --- 934; Waukesha --- 719; Menomonee Falls --- 362; North Milwaukee --- 681; Cedarburg --- 217; and West Allis --- 456 (complainants exhibit 207). The existing dealers, as a group sold in excess of the combined planning potential for the MSL in 1993 and are on a pace to do so in 1994.

17. The planning potential for the proposed dealership is currently 456 cars and trucks. This is revised from the original planning potential of 696 (the planning potential for the West Allis Trade Zone was recalculated when the trade zone boundaries were redrawn after the site of the proposed dealership was selected see paragraph 24, *infra*). The intervenor speculates that within five years, the proposed dealership will be selling 1200 new cars and trucks from the proposed location (tr. p. 1667).

The proposed facility will be 40,892 square feet in size and sit on six acres of land.

Based on Chrysler's facilities guidelines, the proposed facility will be large enough to handle annual sales in the neighborhood of 1200 cars and trucks. However, the intervenor testified that he plans to remodel an existing building on the site and intends to have a large used car showroom at this facility; therefore, Chrysler's facilities guidelines are not necessarily applicable to this dealership.

18. Complainants calculated a contribution analysis to show what portion of their profits were attributable to each new vehicle sale. The record contains no evidence to discredit the contribution analysis; however, if their sales volumes were smaller adjustments could be made to the operation which would affect the analysis. The complainants were profitable in past years with lower sales.

19. Robert Schlossmann owns the dealership facility occupied by DCOW. DCOW leases the property from Robert Schlossmann. (The annual lease payments made to Robert Schlossmann is set forth at transcript p. 64. This portion of the hearing is confidential and the figure will not be recorded here.) The City of Wauwatosa estimates the fair market value of the land and improvements in 1993 at $1,610,600 (complainants exhibit 169). Additional investments and leasehold improvements made by DCOW and Robert Schlossmann personally are set forth in complainants exhibit 152. This exhibit is designated "highly confidential" and the information will not be recorded here.

20. Chrysler Realty leases the land and owns the buildings occupied by DCOM. DCOM in turn leases the land and buildings from Chrysler Realty. The annual lease payments are set forth at transcript p. 53. This portion of the hearing is confidential and the figure will not be recorded here. Additional investments and leasehold improvements made by DCOM are set forth in complainants exhibit 153. This exhibit is designated "highly confidential" and the information will not be recorded here.

21. One method used to evaluate the profitability of a dealer is to calculate the return on its operating investment. "Operating investment" is defined as a dealer's working capital plus certain fixed assets, but excluding land, buildings, building equipment and leasehold improvements. The operating investment at the end of 1993 for DCOW and for DCOM are set forth in complainants exhibit 60. This exhibit is designated "highly confidential" and the information will not be recorded here. The return on operating investment for the years 1990-1993 for DCOW, DCOM, and the four other existing Dodge dealers in the MSL are set forth in complainants exhibit 61.

22. Chrysler recommends a return on operating investment of between 35% and 40%. For the years 1990 to 1993, DCOM was within this range and DCOW was substantially below this range. In the instant case, return on operating investment is not a meaningful measure. Both DCOM and DCOW have an operating investment far in excess of the amount recommended by Chrysler. It is unrealistic to expect to earn the same return on an operating investment as large as that of either DCOM or DCOW as one would earn on the minimum operating investment required by Chrysler.

On the other hand, Chrysler recalculated the return on operating investment complainants would be earning if they had the amount of working capital recommended by Chrysler invested in their dealerships. Under these conditions, the return on operating investment in 1993 for DCOW would have been 87.7% and for DCOM would have been 101.1% (respondent exhibit 203). However, this analysis is also suspect. If the complainants reduced the amount of working capital invested in their dealerships to the minimum recommended by Chrysler, their net profit would also decrease.

23. Respondent exhibit 202 sets forth the return on sales achieved by the complainants compared to the average for all motor vehicle dealers in the United States (as reported by the National Automobile Dealers Association (NADA)) for the period from 1984 through 1993. The return on sales achieved by the complainants is above the average for all motor vehicle dealers in the United States. Exhibit 202 is not designated "confidential;" however, it was discussed during a portion of the hearing which was confidential; therefore, it is assumed that this information is considered confidential. Since the NADA average includes small, rural dealerships as well as metropolitan dealerships, a fairer method to compare profits is as a percentage of sales. In 1993, the net profit as a percentage of sales for DCOW was 2.9%, for DCOM it was 3.3%, and the NADA average was 1.6%. The year 1993 was not an aberration. For the ten year period from 1984 to 1993, the net profit as a percentage of sales for DCOW was 1.8%, for DCOM it was 3.3%, and the NADA average was 1.6%.

24. The location of DCOM is the location of the former Peters Dodge. Peters Dodge went bankrupt in 1979. Its franchise was terminated and Chrysler awarded a D/DT franchise to the Schlossmanns for that location.

25. In addition to Doering Dodge which voluntarily surrendered its franchise and Peters Dodge which filed bankruptcy as discussed above, several other D/DT dealers have left the MSL since 1978. Schwarz Motors resigned its Dodge franchise in August, 1979, Doering Dodge of Waukesha resigned its Dodge franchise in March 1981, Cassel Dodge resigned its Dodge franchise in August, 1982, Gordie Boucher Dodge in Waukesha resigned its Dodge franchise in June, 1983, and Tower Dodge sold its Dodge franchise to Stark in 1989 (complainants exhibit 115).

26. In 1979 and 1980, Chrysler itself was on the verge of bankruptcy. Its sales were low. The federal government passed a loan guarantee bill to aid Chrysler. Since then Chrysler has rebounded and is currently booming. In 1993 D/DT dealers have been able to sell virtually every motor vehicle Chrysler has been able to build. Chrysler stopped taking sold orders (vehicles ordered for a specific customer) for 1994 models on May 2, 1994 and was forced to cancel some sold orders submitted on or after that date.

Chrysler also canceled numerous stock orders (vehicles ordered by dealers for the dealer's inventory). The number of canceled orders for D/DT dealers in the MSL for the period from 1987 through June, 1994 according to records of Chrysler is set forth in complainants exhibit 58. The number of canceled orders in 1994 as of June 23, 1994 according to the record of the complainants are set forth in complainants exhibits 58 (DCOM) and 59 (DCOW). These exhibits are designated "highly confidential" and the information will not be reproduced here. The records of complainants indicate significantly more canceled orders than do the records of Chrysler. Regardless of the number of the canceled orders, the fact is undisputed that Chrysler is currently unable to build sufficient number of vehicles to satisfy the demand.

27. When approving sites for its dealers, Chrysler, as do presumably other manufacturers, selects sites which are convenient for customers. Convenience, with respect to retail motor vehicle customers, has two components. One component is to locate close to other motor vehicle dealers. Groups of motor vehicle dealers located in proximity are referred to as automotive clusters or rows. Locating in clusters or rows make it convenient for potential customers to comparison shop comparable models of different manufacturers. Consumer behavior studies reach different conclusions with respect to how far people are willing to travel to buy a car; however, regardless of how far people are willing to travel, it is a universally accepted principle in the motor vehicle retail industry that it is advantageous for motor vehicle dealers to locate near dealers of other line-makes of motor vehicles.

The other component to convenience is to locate dealers at sites where it is convenient for owners to bring their vehicles for service. This means dealers should be located near where people live or work.

28. The proposed site is located between a large Ford dealer (Hiller Ford) and a large Chevrolet dealer (Holz Chevrolet). Also located in the West Allis Trading Zone are Berndt Buick, Boucher Nissan, Selig Chevrolet, Metropolitan Cadillac, Hub Chrysler-Plymouth, Honda-Isuzu-Oldsmobile City (owned by the Schlossmanns), Hub Jeep-Eagle, Wilde Toyota and Slocum Pontiac (tr. p. 919).

29. The site of the proposed dealership is approximately six miles straight line distance from DCOM and less than ten miles from DCOW (complainants exhibits 3 and 4). The driving distance by the closest highway route between the site of the proposed dealership and DCOM is 6.1 miles. The driving time by the fastest route is eleven minutes (respondent exhibit 90). The driving distance between the proposed site and DCOW is 10.2 miles by the closest highway route and the driving time is 18 minutes by the fastest route (respondent exhibit 90).

30. Dodge is the only major line-make without representation in the West Allis Trading Zone. However, this fact is misleading. The trade zone boundaries are drawn by Chrysler. A portion of the boundary between the Wauwatosa Trading Zone and the West Allis Trading Zone is Lincoln Avenue in West Allis. Most of the dealers listed in paragraph 28, *supra*, are located in two clusters a short distance south of Lincoln Avenue. If the boundary were moved approximately one and a half miles to the south (i.e. Morgan Avenue) all but two of the dealers in these two clusters would be in the Wauwatosa Trading Zone which has a Dodge representative (DCOW).

In fairness to Chrysler, it should be noted that no attempt was made to manipulate the trade zone boundaries to strengthen Chrysler's position. Trade zone boundaries are drawn by computer. Dealer point locations are plotted on a map by longitude and latitude. The computer will then draw lines which are equidistant between the dealer points. These lines, with minor modifications for major highways and natural boundaries such as rivers, lakes and parks, are the trade zone boundaries.

Chrysler made a decision to retain West Allis as a dealer point after Doering Dodge surrendered its franchise. Once the decision was made to retain the point, the boundaries for the West Allis Trade Zone were determined by standard practice. Originally the location of the former Doering Dodge was used to determine the boundary, after a site for the proposed dealership was selected, the trade zone boundaries were redrawn using this location.

31. The southwestern portion of Milwaukee County and the southeastern portion of Waukesha County are growing rapidly in terms of population and household income. Cities located in the West Allis Trading Zone include all or portions of West Allis, Greenfield, Hales Corners, Greendale, Franklin, and a small section of the City of Milwaukee in Milwaukee County and New Berlin, Muskego and Big Bend in Waukesha County (respondent exhibit 152).

Between 1980 and 1993 the number of households in the West Allis Trading Zone increased from 31,592 to an estimated 40,701, an increase of 9,109 or 28.8% (respondent exhibit 107 note: exhibit 107 is designated "highly confidential;" however, it was discussed during a portion of the hearing which was not confidential; therefore, it is assumed that this information is no longer considered confidential). The rate of household growth is the third largest in the MSL, behind Waukesha (32.4%) and Menomonee Falls (30.8%). (In the automobile industry the number of households, as opposed to population, is considered more significant because households generally represent a car or truck buying unit.) The rate of household growth in the West Allis Trading Zone is nearly twice the rate for the State of Wisconsin (15.0) and nearly three times the rate for the MSL (9.6%). The number of households in the West Allis Trading Zone is expected to grow at a faster rate than either the state or the MSL.

Similarly, the mean household income in the West Allis Trading Zone was estimated at $47,434 in 1993, the third highest in the MSL behind Waukesha ($49,,087) and Cedarburg ($47,457). The mean household income is projected to increase to $56,720 by 1998 (respondent exhibit 108).

32. Complainants' combined market share of selected line-makes in the MSL is 3.22%. Among Dodge dealers in the MSL, DCOW had a market share of 21.50% and DCOM had a market share of 24.10 (complainants exhibit 90). Combined retail and fleet sales for the six existing D/DT dealers in the MSL for 1993 are listed in paragraph 12, *supra*.

Both DCOW and DCOM sell more than twice as many new vehicles than the next largest existing D/DT dealer in the MSL. The average of the sales of DCOW and DCOM is 1401.5. The average of the sales of the other four existing dealers is 534.25. Based on these statistics, DCOW and DCOM are much more productive than their intrabrand competitors and should have a competitive advantage. In terms of intrabrand competition, another D/DT dealer in the MSL, especially one anticipating sales of 1200 vehicles per year within five years and located adjacent to both DCOW and DCOM will increase competition in the relevant market.

33. An analysis of the facilities of the existing dealers is set forth on complainants exhibit 80. This information was labelled "highly confidential" and will not be reproduced here. However, based on this information and for reasons further set forth in the discussion section of this decision, adequate service facilities exist in the MSL. DCOW and DCOM have both had to resort to leasing additional land off site for storage of vehicles. This is inconvenient and not desirable; however, there is no evidence that any sales of Dodge vehicles were lost because of this arrangement.

On the other hand, complainants argue that an excess of service facility capacity exists for Dodge in the MSL. This argument is based on the percentage utilization of service facility Chrysler calculates for each dealer. The percentage utilization of service facility for each of the existing D/DT dealers in the MSL as calculated by Chrysler is shown in complainants exhibit 83.

This exhibit is designated "highly confidential" and the specific information will not be recorded here; however, the range for the existing dealers is from 19.3% to 55.6%. The goal of Chrysler for service facility utilization is 100%. This is not a realistically attainable goal. In evaluating the adequacy of the service facilities in the MSL, Chrysler's facility guidelines and the service backlog are more meaningful measures.

34. Planning potential or rate of travel are the basis for determining the investment a dealer is required to make in its facilities; however, neither is the basis on which Chrysler actually allocates vehicles to its dealers. Chrysler allocates vehicles to its dealers on a "turn-and-earn" system. The allocation system is described with two modifications in complainants exhibit 205. One modification is that production is now allocated every seven days rather than every ten days. The other modification is that production is now allocated on a national, rather than zone, basis.

Under the turn-and-earn system, Chrysler first calculates a national target days' supply for each vehicle model it manufacturers. Chrysler then attempts to even out individual dealers' days' supply of each vehicle model. The days' supply for an individual dealer is calculated by dividing the number of vehicles of a particular model a dealer has in its inventory (a dealer's inventory includes vehicles scheduled for production for the dealer, in transit from the factory to the dealer, and unsold vehicles on the dealers lot), by the average number the dealer sells per day.

For example, if a dealer has 300 new Dodge Caravans in its inventory and sells an average of five Caravans per day, its days' supply would be sixty. A dealer can increase its allocation *vis-a-vis* other dealers by increasing its sales rate. If the dealer in the example increased its rate of sales to six Caravans per day, its days' supply would drop to fifty. Assuming the national target days' supply was sixty, the dealer's allocation would be increased. The dealer could order and would receive additional Caravans. Thus by selling (turning) vehicles at a faster rate, a dealer can earn additional allocation.

35. In 1993, and year-to date 1994 (as of the most recent sales figures available at the time of the hearing), the existing D/DT dealers in the MSL were selling all of the motor vehicles Chrysler was able to supply to them. The complainants and the other D/DT dealers who testified at the hearing indicated they could have sold more vehicles if Chrysler would have been able to provide them. Robert Schlossmann testified that the complainants could sell 600, and possibly as many as 800, additional new vehicles (tr. p. 60); Michael Schlossmann testified that the complainants could sell 200 more new vehicles from each of their dealerships (tr. p. 198); William Stark, co-owner of Stark Dodge, testified that his dealership could sell more new Dodge vehicles if they were given more product to sell (tr. p. 270); and Harvey Padek, owner of North Shore Dodge, testified that his dealership could have sold more new vehicles than were allocated to his dealership (tr. p. 211).

Witnesses for the respondent and intervenor testified that the proposed dealer could sell the number of vehicles in its planning potential without taking away any sales from any of the existing dealers. The proposed dealer's sales would be made up of lost sales (the number of sales needed to bring the penetration ratio of the MSL up to the Milwaukee Sales Zone average), conquest sales (sales taken from interbrand competitors), and incremental sales (sales resulting from having a D/DT representative in the trading zone and from the growing popularity of Dodge models).

It is unrealistic to expect that none of the proposed dealer's sales would come at the expense of existing D/DT dealers. However, since the dealers who testified all indicated they could have sold more vehicles if they were available, obviously the potential for more sales in the sales locality exists without taking sales from the existing dealers. Sufficient demand exists in the MSL for Dodge products for seven D/DT dealers to survive.

36. The existing dealers are selling in excess of their planning potential and even with a seventh dealer in the Sales locality, enough sales are available for the existing dealers to continue to sell in excess of their respective planning potentials. This is all that they have been promised by Chrysler and §218.01(3)(f), Wis Stats. What the existing dealers will be denied if the proposed dealer is established is an opportunity to fully capture the potential profits generated by the growing popularity of Dodge models. Sufficient business is available to sustain seven dealers in the MSL without jeopardizing the investment required of any of the existing dealers. The threat to existing dealers will occur if, and when, the annual sales of the proposed dealer reach 1200 new vehicles. If any of the existing dealers is unwilling or unable to compete aggressively with the proposed dealer, that dealer may fail.

37. Chrysler-Plymouth and Jeep-Eagle dealers compete indirectly with Dodge/Dodge Truck dealers for sales and service. C-P and J-E dealers sell models which are nearly identical to many of the models of Dodge automobiles. For example the Dodge Caravan is comparable to the Plymouth Voyager, the Dodge Spirit is comparable to the Plymouth Acclaim, the Dodge Intrepid is comparable to the Chrysler Concorde and Eagle Vision, the Dodge Shadow is comparable to the Plymouth Sundance, and the Dodge Colt is comparable to the Plymouth Colt and Eagle Summit. Chrysler plans to sell an identical version of the Neon from both C-P and D/DT dealers. C-P dealers are authorized to perform warranty work on Dodge vehicles.

38. Chrysler calculates a Consumer Satisfaction Index (CSI) for its dealers. CSI scores measure the satisfaction of customers who have their vehicles serviced by a particular dealer and are calculated monthly. The average CSIs for the existing D/DT dealers in the MSL for the period from May, 1993 to March, 1994 are: DCOW --- 3.33, DCOM --- 3.32, Stark --- 3.37, Wilde --- 3.31, North Shore --- 3.39, and Five Corners --- 3.58. The method for calculating CSI scores was not fully explained; however, in general, the higher the number the better the score (complainants exhibit 97 note: this exhibit is designated "highly confidential," however, this designation was waived by the respondent at the hearing). The average CSI for Mayfair Chrysler-Plymouth, Ewald's dealership, for this same time period is 3.17.

DISCUSSION

The issue in this case is whether good cause exists not to permit the establishment of the proposed Ewald Dodge/Dodge Truck dealership in Franklin within the relevant market area of DCOM, DCOW and the other existing D/DT dealers in the Milwaukee sales locality under the existing circumstances. The statute lists eight factors to be considered in making this determination.

The first factor is "the amount of business transacted by existing enfranchised dealers of the line make motor vehicle when compared with the amount of business available to them." The amount of business available to the existing D/DT dealers can be measured several different ways. Chrysler argues that the appropriate comparison is how the penetration ratio for Dodge in the Milwaukee Sales Locality, particularly in the West Allis Trading Zone, compares, to the penetration ratio in the Milwaukee Sales Zone. Under this comparison, existing D/DT dealers in the MSL are not capturing the amount of business available to them. According to Chrysler's lost sales analysis, in 1992 it would have taken an additional 868 additional Dodge registrations in the MSL and 792 in 1993 for the penetration ratio for Dodge in the MSL to reach the same level as in the Milwaukee Sales Zone (respondent exhibit 115).

On the other hand complainants argue the appropriate measure should be whether D/DT penetration in the MSL is at or above its national penetration. Alternatively, complainants argue that Chrysler should compare the penetration ratio in the MSL to that in Chrysler's "top 100" markets. (Chrysler's top 100 markets refers to the most populous metropolitan area in the United States. The top 100 markets actually includes 122 markets.) According to complainants' calculations, the penetration ratio in the top 100 markets was a mean of 5.78% and a median of 5.74%. (complainants initial posthearing brief, p. 16) Under either of these comparisons, the existing dealers are adequately capturing the amount of business available to them.

There are flaws in using any of these comparisons to determine whether the existing dealers in the MSL are adequately capturing the amount of business available to them. Domestic brands, such as Dodge, generally achieve a higher penetration ratio in rural areas where there is less competition from imports than in urban areas. A significant portion of the MSL is rural. Therefore it is unrealistic to expect the penetration ratio for Dodge in the MSL to be as high as it is for the entire Milwaukee Sales Zone. Similarly, domestic brands generally achieve greater acceptance in the Midwest than on either coast. A large percentage of the U.S. population and the top 100 markets are located along each coast. Therefore, the penetration ratio for Dodge in the MSL should be greater than in the U.S. as a whole or the average for the top 100 markets.

Additional Dodge sales are available in the MSL. Although it is difficult to state a precise number, the number is greater than any of those used by the complainants' expert in his analysis but probably less than the approximately 800 per year calculated by Chrysler's market review and planning specialist. Setting aside the contradictory, mathematical analyses offered by the parties, the simple, undisputed fact remains that the existing Dodge dealers, including the complainants, who testified at the hearing all stated unequivocally that they could have sold more Dodge cars and trucks the last two years if they had been available. This testimony was undoubtedly based on both first hand observations and information from their respective sales staffs. The penetration ratio for Dodge in the MSL is lower than one would expect; therefore, the existing dealers are not capturing the amount of business available to them.

The next question which needs to be addressed is whether anything can be done to capture the additional business or is the situation the result of demand for Dodge vehicles exceeding supply at this time. Complainants argue that they and the other existing Dodge dealers are currently selling all motor vehicles which Chrysler is able and willing to provide them. Therefore, no matter what efforts they make they are unable to sell any additional vehicles. This is not accurate. Under Chrysler's "turn and earn" allocation system, if existing dealers sold the vehicles allocated to them more quickly, they would be allocated additional product. If the existing dealers sold more aggressively, they would earn more allocation and thus be able to sell more vehicles. Ultimately, they would be able to increase the penetration rate of D/DT vehicles in the MSL if their increased sales efforts were successful.

Complainants, alternatively, argue that if Chrysler infused a one time extra allocation to the existing dealers in the Milwaukee sales locality, the existing dealers could use those sales as a basis for permanent increased allocation which would enable them to achieve an increased penetration rate. The theory is that if Chrysler provided additional product to the existing dealers, under the "turn and earn" allocation system, the existing dealers could earn the extra allocation. With the extra allocation, the dealers could increase the penetration ratio in the

MSL. This argument is valid only if the existing dealers were able to sell the extra allocation at a faster rate than they are currently selling vehicles.

However, even assuming the existing dealers are willing and able to sell additional product at a rate which would maintain the increased allocation level, this argument raises another issue. That issue is if additional vehicles can be supplied for sale in the MSL should these vehicles, and the profits from their sale, be given to the existing dealers or to a new dealer. This question is related to the seventh statutory factor and will be addressed *infra.*

The second factor to be considered is "the permanency of the investment necessarily made and the obligations incurred by existing enfranchised dealers in the performance of their franchise agreements." This factor more than any of the others is concerned with fair treatment of franchised dealers by manufacturers. In enacting §218.01(3)(f), Stats., the legislature, among other things, was attempting to ensure that manufacturers treat dealers fairly. The legislature recognized the disparate power of the manufacturer *vis a vis* its dealers. Manufacturers require dealers to make minimum investments in land, facilities, equipment, inventory, etc. In exchange for this investment, the dealer is entitled, at a minimum, to expect that the manufacturer will not establish an excessive number of dealers in competition with it to the point of jeopardizing the existing dealer's investment.

Complainants argue that according to Chrysler's own guidelines with respect to return on investment, they are not earning an adequate return on their investment. Complainants' return on equity is inadequate according to both Chrysler guidelines and the National Automobile Dealers Association guidelines. This is mainly true because complainants have highly capitalized dealerships. This allows them to earn higher profits because, for instance, they have lower floor planning costs and other interest payments. But it is unrealistic for complainants to expect to earn the same return on their entire investment as they would if they only had the minimum capital invested.

Complainants are earning a healthy profit on their investment and their investment will not be jeopardized by the establishment of the proposed dealership. The other existing dealers who testified at the hearing, did not indicate that the investment in their respective dealerships are threatened by the proposed dealership, rather, their primary concern was that they are unable to obtain enough product and believe that Chrysler should not be establishing additional D/DT dealers at a time when existing dealers are not being given as much product as they are able to sell.

The automobile and small truck markets are cyclical. Discussing the effect of establishing another dealer in the Milwaukee Sales Locality at a time when demand is high contrasted, as done by Chrysler, with a case involving the same market at a time when the industry was depressed underscores a paradox in these types of cases. When demand for cars and small trucks is high, existing dealers argue that no additional dealers should be established because the manufacturers are unable to meet the needs of the existing dealers. When the industry is at a trough in its cycle, the existing dealers resist the establishment of an additional dealer because sales are depressed and it would be unfair to the existing dealers to have another dealer competing for a reduced number of sales.

This is not a disagreement with the fundamental intent of the law, but rather, an assertion that the phrase "under existing circumstances" should be interpreted broadly. "Existing circumstances" must be more than one or two recent model years. It must include sufficient time to determine the general market trend. In the instant case, the population in the West Allis Trading Zone is increasing rapidly. The southwest portions of Milwaukee county and southeastern portions of Waukesha county are growing rapidly, both in terms of population and household income. Sufficient additional customer base exists in this geographical area to support another D/DT dealer without jeopardizing the investments of any existing dealers in the Milwaukee Sales Locality.

If any existing dealers fail it is because they are inefficient competitors, not because the MSL is overdealered with respect to Dodge. The purpose of §218.01 (3)(f), Wis. Stats., is not to keep inefficient dealers in business. The purpose is to protect existing dealers of a line-make of motor vehicles from unfair treatment by the manufacturer. With respect to current Dodge owners/customers, the existing dealers should have an inherent advantage in selling these persons their next new motor vehicle. If the proposed dealership attracts these customers away from the existing dealers, it is because it is offering something lacking in the existing dealers, such as a lower price, better service, or a more convenient location. This is to the benefit of consumers.

The next three factors all involve the impact on the relevant market and can be considered together. The factors are:

1. The effect on the retail motor vehicle business in the relevant market area.

2. Whether it is injurious to the public welfare for the proposed dealership or outlet to be established or relocated.

3. Whether the establishment or relocation of the proposed dealership or outlet would increase competition and therefore be in the public interest.

An additional dealer will increase competition in the MSL. Increased competition, as a rule, is beneficial to the public. However, larger dealers enjoy economies of scale and achieve lower costs per unit. Assuming sufficient competition, this will ultimately mean lower prices to consumers. The required balancing involves the benefits to consumers of more dealers which, to a point, will increase competition and result in lower prices versus the efficiencies resulting from larger volume dealers.

A need for more competition can be shown by some dealers earning excessive profits. Complainants attempted to show that their prices are no higher than other Dodge dealers. Even though there is no evidence that complainants prices are excessive, by virtue of their high volume and high level of capitalization, their costs should be lower than the other existing D/DT dealers in the MSL. The fact that complainants' prices are comparable to other D/DT dealers in the MSL indicates that complainants are earning excess profits. If the proposed dealership is established the complainants will be forced by market pressures to reduce their prices. Lower prices are in the public interest.

Complainants argue that adding a seventh dealer would lower the productivity of their dealerships compared to other dealers in the MSL. This would make them less efficient competitors and ultimately result in higher prices or lower quality service to the public. Any benefit from increased competition in the MSL from adding an additional D/DT dealer would come at the cost of reduced efficiency among the existing dealers. The validity of this argument is different for interbrand competition as opposed to intrabrand competition. Among all dealers in Wisconsin, in 1993 DCOW ranked 31st and DCOM ranked 28th (respondent exhibit 226). In terms of interbrand competition, neither DCOW or DCOM have market power; therefore, they are already forced to fully compete on an interbrand basis. Establishing another dealer in the MSL would not increase interbrand competition in the MSL.

However, in terms of intrabrand competition within the MSL, DCOW and DCOM are dominant. DCOW and DCOM each sell more than twice as many new vehicles than the next largest existing D/DT dealer in the MSL. Based on this fact, DCOW and DCOM are much more productive than their intrabrand competitors and have a competitive advantage. In terms of intrabrand competition, another D/DT dealer in the MSL, especially one anticipating sales of 1200 vehicles per year within five years and located adjacent to both DCOW and DCOM will increase competition in the relevant market. The establishment of the proposed dealership will increase intrabrand competition in the MSL and any loss in efficiency will be justified by the increase in competition.

The West Allis Trading Zone is a hot area for new car sales. Aside from the question of whether the MSL can sustain a seventh D/DT dealership is the question of whether Dodge is entitled to representation in this market. An undeniable trend in the retail automobile industry is the trend towards larger, higher volume dealerships. Adding a seventh D/DT dealership in the MSL is contrary to this trend.

According to all but the most optimistic forecasts, establishing a seventh dealership will eventually reduce the number of sales for each of the existing dealerships. The number of sales per existing dealer will drop. The number of sales per D/DT dealer in the MSL is already lower than other major domestic line-makes, such as C-P-J-E dealers. Chrysler did explore other alternatives for obtaining representation in the West Allis Trading Zone other than establishing Ewald as a seventh dealer. Most notably offering the complainants the opportunity to establish a dealership in that area. None of the other alternatives worked out and Chrysler proceeded to offer the franchise to the Ewalds.

Chrysler's decision to establish the proposed dealership is as much a matter of wanting representation in a hot local market as it is about establishing a seventh dealer. On this basis it is a rational, justifiable decision. If Chrysler were denied the opportunity to establish a dealer at a time when the industry as a whole is doing well and Dodge products particularly are in great demand, it is inconceivable a time would ever exist that this franchise would be permitted. Complainants' argument that one must also look at the market during the inevitable downturn is valid; however, the intent of the statute is also not to permanently maintain the *status quo*.

On the competition factors, one other comment must be made. Chrysler, through its expert at the hearing, attacked the existence of a relevant market area law in Wisconsin. To a lesser extent, this argument was also made in its posthearing brief. Chrysler argues that relevant market area laws are anticompetitive because they create an obstacle for the establishment of additional dealers. Chrysler argues that the market forces should determine the number of dealers in a market.

This argument might be persuasive if Chrysler allowed dealers to enter and exit the market at will and make their own decisions regarding investment in facilities and personnel. However, Chrysler would not allow a dealer to abandon its products during a market downturn and resume selling them in a strong market. Similarly, Chrysler has a policy against allowing dealers to dual their facilities. Dualing facilities, would allow dealers more cushion if Chrysler established competing dealers within the relevant market area. Chrysler also has minimum facility requirements which applicants must agree to meet before they will be awarded franchises. If Chrysler insists on these conditions, they must accept some protection for the investment of existing dealers.

The sixth statutory factor is "whether the existing enfranchised dealers of a line make of motor vehicle are providing adequate consumer care for the motor vehicles of that line make, including the adequacy of motor vehicle service facilities, equipment, supply of parts and qualified personnel." The only evidence Chrysler presented indicating that the existing D/DT were not providing adequate consumer care for Dodge vehicles was anecdotal testimony regarding telephone calls from Dodge owners seeking reimbursement for warranty work done at non-authorized service facilities. The point of this testimony was that the existing dealers are unable to handle the amount of service work available and, therefore, a need exists for additional Dodge service facilities. Based on the overall evidence in the record, especially considering that existing C-P dealers who are also authorized to perform warranty work on Dodge vehicles, adequate service facilities for Dodge motor vehicles exist in the Milwaukee Sales Locality.

Chrysler cited the testimony of Michael Schlossmann that the average wait for service is three to four days. Obviously it would be virtually impossible to precisely match the amount of service facilities with the demand for service work. The only way to ensure that all customers received service immediately upon demand would be if there was tremendous excess service capacity. There was no evidence that the backlog in service work is increasing. Existing dealers have the capacity to reconfigure their service facilities in such a way to increase the number of service stalls available. If excess demand for service work exists, the existing dealers will increase the number of service stalls available for service work. The fact that the existing dealers used stalls for body work and painting, which are less profitable than mechanical service, indicates that a demand for additional service facilities does not exist.

The seventh factor is "whether the existing enfranchised dealers of the line make of motor vehicles are receiving vehicles and parts in the quantities promised by the manufacturer, factory branch or distributor and on which promised quantities existing enfranchised dealers base their investment and scope of operations." Complainants and the other two existing dealers in the Milwaukee sales locality who testified at the hearing all testified that they could have sold more Dodge cars and trucks in 1993 and 1994 if they had been available. It is uncontroverted that in 1993 and 1994 Dodge models were for the most part extremely popular. The fact that Chrysler was unable supply existing dealers with the number of vehicles they could sell in a hot year, is not good cause for denying the establishment of an additional dealership.

Chrysler requires an investment by its dealers in facilities based on the dealer's planning potential or rate of travel, whichever is greater. As a group the existing dealers are selling in excess of the planning potential for the MSL. Therefore, the existing dealers are receiving vehicles and parts in the quantities upon which their respective investments are based. The existing dealers are receiving vehicles and parts in the quantities promised by Chrysler and upon which their investment and scope of operations are based.
The final factor is "the effect the denial of such establishment or relocation would have on the licensed applicant, dealer or outlet operator who is seeking to establish or relocate a dealership or outlet." Intervenor argues that the amount he has invested in purchasing an option on the site of the proposed dealership should be considered. One cannot allow an applicant to skew the process by investing large sums of money in its attempt to obtain a franchise. Other than the investment in the site and legal fees associated with this case, intervenor has no significant investment in its application. The cost to the applicant would be the opportunity cost of the proposed franchise. This is difficult to quantify; however, it is acknowledged that there is an opportunity which will be lost to the applicant if the proposed dealership is not permitted.

Intervenor, in support of its application of the proposed dealership, also raises the benefits of its proposed dealership to the City of Franklin and the West Allis Trading Zone. If the proposed dealership were established, it would provide substantial tax revenue to the City of Franklin. However, if the proposed dealership were not permitted, undoubtedly another use would be made of the proposed site. It is pure speculation to attempt to determine whether the proposed dealership would provide more tax revenue than another use. Similarly, Intervenor touts the sixty-five to seventy jobs which would be created by the proposed dealership. The creation of sixty-five to seventy jobs is important; however, another use could be made of the proposed site which may create as many or possibly more jobs.

Attempting to gauge the impact on the local economy of the establishment of a dealership is beyond the scope of the public welfare considerations in the statute. This factor is more relevant in situations such as an existing dealer seeking to acquire another franchise to support an underutilized facility or a dealer who, for some reason, lost a franchise and is seeking to acquire another franchise for an existing facility.

In summary, it is critical to remember it is the complainants' burden to show good cause exists to not permit the establishment of the proposed dealer, not the respondent's burden to show a need for a seventh D/DT dealer in the MSL. The record contains no substantial, credible evidence that the existing dealers are not providing adequate representation of Dodge products in the MSL or are not adequately servicing Dodge owners in the MSL. However, there is also no substantial, credible evidence that a seventh dealer would threaten the investment of any of the existing dealers. Sufficient demand for the sales and service of Dodge motor vehicles exists in the MSL to support seven dealers.

A seventh dealer will inject additional competition into the market which will be beneficial to the public. The existing dealers who testified all indicated that they could have sold more Dodge cars and trucks in 1993 and 1994 if they would have been able to get them. Even with some allowance for overly optimistic projections resulting from enthusiasm regarding attractive new models and some overlap resulting from the same customers trying to order unavailable vehicles from more than one dealer, clearly there is enough excess demand for Dodge products to sustain seven dealers in the MSL in an average year and not drive any of the dealers out of business in the inevitable down years.

CONCLUSIONS OF LAW

THE ADMINISTRATOR CONCLUDES:

1. Good cause does not exist to deny the establishment of the proposed dealership within the relevant market area of the complainants.

2. Pursuant to §218.01(3)(f), Stats., the Division of Hearings and Appeals has the authority to issue the following order.

ORDER

THE ADMINISTRATOR ORDERS:

The complaint of Dodge City of Wauwatosa and Dodge City of Milwaukee protesting the establishment of a new Dodge/Dodge Truck dealership within their relevant market area by the Chrysler Corporation is dismissed.

Dated at Madison, Wisconsin on April 28, 1995.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By ______________________
David H. Schwarz
Administrator

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